

RECORDATION NO. 5851 Filed & Recorded


OCT 14 1970 - 11 50 AM

INTERSTATE COMMERCE COMMISSION

STATE OF NEW YORK     )  
                              ) ss.:  
COUNTY OF NEW YORK    )

I, the undersigned, a notary public of the State of New York, do hereby certify that I have compared the attached document with the original signed Agreement dated as of September 1, 1970, between ACF INDUSTRIES, INCORPORATED and CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD COMPANY, and that the attached document is a true, correct and complete copy of the original in all respects.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal this 12th day of October, 1970.



HERBERT T. McDEVITT  
Notary Public, State of New York  
No. 60-261141C  
Qualified in Westchester County  
Cert. Filed in New York County  
Commission Expires March 30, 1971

THIS AGREEMENT, dated as of Sept. 1 , 1970, by and between ACF INDUSTRIES, INCORPORATED, a New Jersey corporation (hereinafter called the "Manufacturer"), and Chicago, Milwaukee, St. Paul & Pacific Railroad Company, a Wisconsin corporation (hereinafter called the "Vendee"),

W I T N E S S E T H :

WHEREAS, the Manufacturer and the Vendee have heretofore entered into the Purchase Agreement (hereinafter called the "Purchase Agreement") referred to in Section 1 of Schedule A hereto attached (hereinafter called "Schedule A") whereunder the Manufacturer has agreed to construct and deliver to the Vendee at the delivery point specified in Section 2 of Schedule A and the Vendee has agreed to accept and pay for the Railroad equipment (hereinafter called the "Superstructures") described in Section 3 of Schedule A; and

WHEREAS, the Vendee has not consummated financing arrangements for the acquisition of the Superstructures; and

WHEREAS, the Vendee has represented to the Manufacturer that it will purchase or provide a purchaser for the Superstructures under the terms of the Purchase Agreement; and

WHEREAS, the Manufacturer has agreed to give the Vendee temporary custody and possession of the Superstructures on their completion, solely as a bailee of the Superstructures;

NOW, THEREFORE, in consideration of the premises and of the promises of the parties herein contained, the parties agree as follows:

1. The Manufacturer agrees to deliver the Superstructures to the Vendee and the Vendee agrees to accept the Superstructures from the Manufacturer at the delivery point above referred to. The rights of the Vendee hereunder in respect of each Superstructure shall commence on the date of acceptance of such Superstructure and end on the earlier of Oct. 25 , 1970, or the date of payment of the purchase price of such Superstructure. When the purchase price of all the Superstructures has been paid this Agreement shall automatically be terminated without further action by or notice to any party concerned. On delivery of each Superstructure to the Vendee the Vendee will assume the responsibility and risk of loss with respect to such Superstructure.

2. After the Vendee's representative finds that each Superstructure upon completion has been built in accordance with the requirements of the Purchase Agreement, he will execute and deliver to the Manufacturer a certificate of inspection certifying to that effect. Upon delivery of each Superstructure to the delivery point, the Vendee's representative will execute a certificate of acceptance acknowledging the receipt of delivery of each Superstructure under this Agreement. Title to the Superstructures shall remain in the Manufacturer and the Vendee's right and interest therein is and shall be solely that of possession, custody, and use as bailee under this Agreement. Transfer of title shall be effected only at the time of

delivery of the bills of sale. The Manufacturer, without expense to the Vendee, will promptly cause this Agreement to be filed with the Interstate Commerce Commission for recordation under Section 20c of the Interstate Commerce Act. The Vendee shall do such acts as may be required by law, or reasonably requested by the Manufacturer, for the protection of the Manufacturer's title to and interest in the Superstructures.

3. The Vendee agrees to pay in respect of each Superstructure an amount which is equivalent to the purchase price of such Superstructure, as set forth in Section 4 of Schedule A. Such amount shall be due and payable to the Manufacturer in cash in accordance with terms of payment set forth in the Purchase Agreement.

4. The Vendee agrees that it will permit no liens of any kind to attach to the Superstructures; and that it will

(a) Indemnify and save harmless the Manufacturer from any and all claims, expenses, or liabilities of whatsoever kind; and

(b) pay any and all taxes, fines, charges, and penalties

that may accrue or be assessed or imposed upon the Superstructures or the Manufacturer because of its ownership or because of the use, marking, operation, management or handling of the Superstructures by the Vendee during the term of this Agreement. The Vendee's obligations contained in this paragraph shall survive the termination of this Agreement by mutual agreement or otherwise.

5. The Vendee will, at its own expense, keep and maintain the Superstructures in good order and condition and will at its option repair or replace or promptly pay to Manufacturer the purchase price in cash of those Superstructures which may be damaged or destroyed by any cause during the term of this Agreement. Upon the expiration or other termination of this Agreement (otherwise than by the Vendee having paid the purchase price of the Superstructures as above provided) the Vendee will surrender and deliver up the Superstructures in good order and condition to the Manufacturer free of all charges at the point designated by the Manufacturer.

6. The Vendee agrees with the Manufacturer that the execution by the Manufacturer of this Agreement or the delivery by the Manufacturer to the Vendee of the Superstructures, as contemplated by this Agreement, shall not relieve the Vendee of its obligations to accept, take, and pay for the Superstructures in accordance with the terms of the Purchase Agreement, or impair any of the Manufacturer's rights under the Purchase Agreement, which is by reference made a part of this Agreement as fully as though expressly set forth herein.

(seal)

Attest

R. W. Montgomery /S/  
Assistant Secretary

(seal)

Attest

J. T. Taussig /S/  
Secretary

ACF INDUSTRIES, INCORPORATED

By W. C. Anderson /S/  
W. C. Anderson, Treasurer

CHICAGO, MILWAUKEE, ST. PAUL AND  
PACIFIC RAILROAD COMPANY

By R. F. Kratochwill /S/  
Vice President-Finance and  
Accounting

SCHEDULE A

SECTION 1.      Purchase Agreement

Milwaukee Road Letter Purchase Order dated November 10, 1969, designated Contract: 70900, as modified by correspondence between Manufacturer and Vendee, including, but not limited to, ACF proposal dated October 28, 1969.

SECTION 2.      Delivery Point

As provided in the above Purchase Agreement.

SECTION 3.      Railroad Equipment

Twelve (12) "Vert-A-Pac" Superstructures

SECTION 4.      Purchase Price

As provided in the above Purchase Agreement.

SECTION 5.      Markings

The "Vert-A-Pac" Superstructures are not numbered, however, when delivered they will be attached to flat cars lettered and numbered TTVX 810247 thru 810258, inclusive.

STATE OF New York )  
 ) SS.:  
COUNTY OF New York )

On this 4th day of September , 1970 , before  
me personally appeared W. C. Anderson , to me personally  
known, who, being by me duly sworn, says that he is Treasurer  
of ACF Industries, Incorporated, that one of the seals affixed to  
the foregoing instrument is the corporate seal of said corporation,  
that said instrument was signed and sealed on behalf of said  
corporation by authority of its Board of Directors and he acknowl-  
edged that the execution of the foregoing instrument was the free  
act and deed of said corporation.

SEAL

Herbert T. McDevitt /S/

HERBERT T. McDEVITT  
Notary Public, State of New York  
No. 60-2611410  
Qualified in Westchester County  
Cert. Filed in New York County  
Commission Expires March 30, 1971

STATE OF ILLINOIS )  
 ) SS.:  
COUNTY OF COOK )

On this 7th day of October , 1970 , before  
me personally appeared R. F. Kratochwill , to me personally  
known, who, being by me duly sworn says that he is Vice President  
of Chicago, Milwaukee, St. Paul and Pacific Railroad Company ,  
that one of the seals affixed to the foregoing instrument is the  
corporate seal of said corporation, that said instrument was signed  
and sealed on behalf of said corporation by authority of its Board  
of Directors and he acknowledged that the execution of the fore-  
going instrument was the free act and deed of said corporation.

SEAL

W. E. Ross /S/